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March 18, 2005

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street SW  
Washington, D.C. 20554

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Re: WT Docket No. 04-257

Dear Ms. Dortch:

Duane Morris, LLP (the “Firm”), hereby submits this request for clarification of the Commission’s Rules and policies relative to the Automated Maritime Telecommunications Service (“AMTS”). As explained below, a grant of this request is important as a matter of fairness to potential bidders in the upcoming AMTS auction and in order to maximize the success of that auction.

### Introduction

The Commission has scheduled an auction of AMTS licenses to begin August 3, 2005 (the “August 2005 auction”).<sup>1</sup> Participation in an FCC spectrum auction requires a substantial upfront payment. For auction No. 61, proposed upfront payments range from \$3,100 for the Alaska region to as much as \$421,000 for the Mississippi River region. Commission Rules also provide that in the event an auction participant is the high bidder, and subsequently defaults, it forfeits the difference between its winning bid and the next highest bid, plus a penalty.<sup>2</sup>

The Commission also has outstanding a proposal which contemplates a significant change in its Rules for AMTS spectrum. See Notice of Proposed Rulemaking released July 30,

<sup>1</sup> See Auction of Automated Maritime Telecommunications System Licenses Scheduled for August 3, 2005, *Public Notice*, 2005 FCC LEXIS 621 (2005).

<sup>2</sup> See Rules 1.2104, 1.2109.

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2004 (the "Notice").<sup>3</sup> In particular, the Notice proposes to amend the Rules to permit AMTS stations to provide private mobile radio service to units on land.<sup>4</sup>

The Firm files this request on behalf of entities interested in the auction for telemetry purposes. This could entail a use of the spectrum in a wide variety of applications. Some of these applications could be for fixed telemetry systems (such as SCADA); some for itinerant or temporary fixed applications (such as surveying); and some for mobile applications (such as utility meter reading). In each case, the desired use of the spectrum would be for co-primary telemetry operations, as opposed to the secondary status allowed telemetry today. As potential bidders in the AMTS auction, Firm clients must be able to make an informed decision regarding the utility of the spectrum resource. It is hoped that this letter will provide a vehicle for the Commission to address these matters.

## Discussion

Under the current Rules, AMTS stations may provide either commercial service or private service to ships at sea and on inland waterways, but may only provide commercial service to units on land.<sup>5</sup> Pursuant to the Notice, AMTS licenses would be allowed to provide private mobile radio service, defined to include both "not-for-profit land mobile radio and paging services that serve the licensee's internal communications needs and mobile radio service offered to restricted classes of eligible users."<sup>6</sup> If the proposed change were adopted, a number of questions would be presented regarding the permissible use of the spectrum for co-primary telemetry purposes.

For example, AMTS Rules require geographic licensees to demonstrate "substantial service" at the time of license renewal in order to ensure a renewal expectancy.<sup>7</sup> In the commercial mobile context, the Commission has identified various "safe harbor" examples of substantial service for AMTS licensees including, but not limited to:

For service areas with major waterways, substantial service can be demonstrated by continuous coverage of two-thirds of those waterways; and for service areas without major waterways, substantial service can be demonstrated by coverage of two-thirds

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<sup>3</sup> See Petitions for Rulemaking to Amend the Commission's Rules to Provide Additional Flexibility for AMTS Station Licenses, *Notice of Proposed Rulemaking*, 19 FCC Rcd 15225 (WT Docket No. 04-257, RM-10743, 2004).

<sup>4</sup> *Id.* at ¶ 1.

<sup>5</sup> *Id.* at ¶ 6.

<sup>6</sup> *Id.* at ¶ 1 n. 2.

<sup>7</sup> See Rule 80.49; see also In the Matter of Amendment of the Commission's Rules Concerning Maritime Communications; Petition for Rule Making filed by Regionet Wireless License, LLC, *Second Memorandum Opinion and Order and Fifth Report and Order*, 17 FCC Rcd 6685, 6686 ¶ 48 (PR Docket No. 92-257, 2002).

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of the area's population. To satisfy the substantial service requirement along a river or the Gulf Intracoastal Waterway, service should be provided across the entire width; to satisfy the requirement on other waterways, coverage should extend out 20 nautical miles from the coastline (unless limited to a smaller area by an international or AMTS geographic area border) or, where applicable, from the line established by the Coast Guard to divide inland waters from territorial seas. In AMTS geographic areas with more than one major waterway, the safe-harbor coverage requirement refers to the total length of all major waterways; coverage need not necessarily be provided to every major waterway, or to any minimum percentage of each major waterway. If a major waterway extends into more than one geographic area, the licensee need only be concerned with the prescribed coverage in its geographic area.<sup>8</sup>

Given the very large size of the geographic areas being auctioned, safe harbors like these are of no benefit to entities conducting telemetry operations for internal purposes in localized areas. Thus, if the Commission determines to allow private mobile radio service, will there be any substantial service safe harbor for private mobile operators? If so, what would it be?

Potential telemetry bidders need guidance in other respects as well. For example, Rule 80.123 contemplates AMTS coast stations continuing to provide "priority to marine-originating communications ...." Presumably, if the station in question does not provide service to third parties, the Rule might not be triggered. However, a question remains on this score given Part 80's overall emphasis on marine communications.

Finally, in addition to clarification, the question arises as to whether a waiver of any other Part 80 Rules or policies would be deemed necessary in order to allow co-primary telemetry operations and, if so, under what criteria. In these and other instances, telemetry parties need guidance before placing funds at risk.

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<sup>8</sup> *Id.* at ¶ 49.

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Without clarifications such as these, potential bidders will not have basic information required to participate in the auction. The Commission's interest in ensuring a productive auction further supports clarification.

Thank you.

Sincerely,

A handwritten signature in black ink, appearing to read "William K. Keane", with a long horizontal flourish extending to the right.

William K. Keane

WKK/jrj